IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4909 OF 2005

Mr.Roshan Alwa : Petitioner

V/s.

The State of Maharashtra & Ors. : Respondents

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Mr.V.S.Parodkar for the petitioner.

Mr.A.H.Palekar, Asstt. Govt. Pleader, for the respondents nos.1 to 3.

Mr.N.N. Bhadrashete for the respondent no.4.

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CORAM : S.A. BOBDE, J.

August 29, 2005.

P.C.:

1. Rule, returnable forthwith.

The learned counsel for the respective respondents waive service of rule.

Heard by consent.

2. The petitioner has challenged the order of the appellate authority upholding the certificate under section 101 of the Maharshtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act".

3. The petitioner is a member of the federal society. This membership has been granted to him after a protracted litigation which ended in the year 2002. The society which had all along denied the benefit of membership to the petitioner claims that certain dues were outstanding from him from 1986 to 2002. The petitioner's contention all along has been that he has tendered cheques which have been refused by the society.

4. Mr.Bhadrashetye, the learned counsel for the respondent no.4-society, states that for certain period, the petitioner did not send any cheques at all. The cheques which were sent by him were not tendered unconditionally. There was thus no unconditional offer for payment.

5. The learned counsel for the petitioner points out several documents on the record of this petition from which it appears that the cheques were tendered to the society which appears to have rejected those cheques, apparently on the ground that the petitioner is not a member.

6. However, the appellate authority in the impugned order

has observed as follows:-

> "However the applicant has not proved that he had sent any cheques and that the society had refused to accept the same. The applicant has not made out any substantial grounds."

This observation is obviously not correct.

7. Even though it is contended by Mr.Bhadrashete, the learned counsel for the respondent no.4, that credit for certain cheques was given to the petitioner and the recovery certificate is drawn on that basis, I am of view that the respondent ought to have made this point before the appellate authority who ought to have considered the matter. The appellate authority, as quoted above, made a blanket statement that the petitioner has not proved that he had sent any cheques. It is an obvious error of law on the face of the order of the appellate authority.

8. The impugned order is, therefore, set aside. If the appellate authority finds that any amount has been paid or offered to the society and the society has unjustly refused to accept the same, the appellate authority will

make appropriate adjustment. The impugned order is, therefore, set aside. The matter is remitted back to the appellate authority for a fresh decision, in accordance with law, after taking into consideration all aspects. The parties are free to lead such evidence as may be necessary before the appellate authority. The appellate authority to decide the matter as expeditiously as possible and, in any case, not later than three months from the date the parties appear before it. The parties are directed to appear before the appellate authority on 2.9.2005.

9. The rule is made absolute in the aforesaid terms.

S.A. BOBDE, J.